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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 **VERNON RUBIDOUX,**

11 Plaintiff,

Case No. CV15-07751 JFW
(RAO)

12 **v.**

13 **~~[PROPOSED]~~ PROTECTIVE**
14 **ORDER**

15 **PAM AHLIN, et al.,**

16 Defendants.

Action Filed: 10/2/2015

17 1. A. PURPOSES AND LIMITATIONS
18

19 Discovery in this action is likely to involve production of confidential,
20 proprietary or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may
22 be warranted. Accordingly, Defendant Mark Peterson (Defendant) hereby petitions
23 the Court to enter the following Protective Order. Defendant acknowledges that this
24 Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use extends
26 only to the limited information or items that are entitled to confidential treatment
27 under the applicable legal principles.
28

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve personal and confidential medical records of
3 the Plaintiff and records implicating the privacy rights of third parties for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecution of this action is warranted. Such confidential and proprietary materials
6 and information consist of, among other things, the Plaintiff's medical and related
7 records, information implicating privacy rights of third parties, and information
8 otherwise generally unavailable to the public, or which may be privileged or
9 otherwise protected from disclosure under state or federal statutes, court rules, case
10 decisions, or common law. Accordingly, to expedite the flow of information, to
11 facilitate the prompt resolution of disputes over confidentiality of discovery
12 materials, to adequately protect information the parties are entitled to keep
13 confidential, to ensure that the parties are permitted reasonable necessary uses of
14 such material in preparation for and in the conduct of trial, to address their handling
15 at the end of the litigation, and serve the ends of justice, a protective order for such
16 information is justified in this matter. It is the intent of Defendant that information
17 will not be designated as confidential for tactical reasons and that nothing be so
18 designated without a good faith belief that it has been maintained in a confidential,
19 non-public manner, and there is good cause why it should not be part of the public
20 record of this case.

21 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

22 Defendant further acknowledges, as set forth in Section 12.3, below, that this
23 Protective Order does not entitle him to file confidential information under seal;
24 Local Civil Rule 79-5 sets forth the procedures that must be followed and the
25 standards that will be applied when a party seeks permission from the court to file
26 material under seal.

27 There is a strong presumption that the public has a right of access to judicial
28 proceedings and records in civil cases. In connection with non-dispositive motions,

1 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
2 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*
3 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics,*
4 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
5 require good cause showing), and a specific showing of good cause or compelling
6 reasons with proper evidentiary support and legal justification, must be made with
7 respect to Protected Material that a party seeks to file under seal. The parties' mere
8 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
9 without the submission of competent evidence by declaration, establishing that the
10 material sought to be filed under seal qualifies as confidential, privileged, or
11 otherwise protectable—constitute good cause.

12 Further, if a party requests sealing related to a dispositive motion or trial, then
13 compelling reasons, not only good cause, for the sealing must be shown, and the
14 relief sought shall be narrowly tailored to serve the specific interest to be protected.
15 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
16 each item or type of information, document, or thing sought to be filed or introduced
17 under seal in connection with a dispositive motion or trial, the party seeking
18 protection must articulate compelling reasons, supported by specific facts and legal
19 justification, for the requested sealing order. Again, competent evidence supporting
20 the application to file documents under seal must be provided by declaration.

21 Any document that is not confidential, privileged, or otherwise protectable in
22 its entirety will not be filed under seal if the confidential portions can be redacted.
23 If documents can be redacted, then a redacted version for public viewing, omitting
24 only the confidential, privileged, or otherwise protectable portions of the document
25 shall be filed. Any application that seeks to file documents under seal in their
26 entirety should include an explanation of why redaction is not feasible.

27 2. DEFINITIONS

28 2.1 Action: This pending lawsuit, *Vernon Rubidoux v. Pam Ahlin, et al.*,

Case No. CV15-07751 JFW (RAO).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff). This shall also include a party proceeding pro se.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”

1 showing for sealing documents produced in discovery from “compelling reasons”
2 standard when merits-related documents are part of court record). Accordingly, the
3 terms of this protective order do not extend beyond the commencement of the trial.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or Non-Party that designates information or items for protection under
7 this Order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The Designating Party must designate for
9 protection only those parts of material, documents, items or oral or written
10 communications that qualify so that other portions of the material, documents, items
11 or communications for which protection is not warranted are not swept unjustifiably
12 within the ambit of this Order.

13 Mass, indiscriminate or routinized designations are prohibited. Designations
14 that are shown to be clearly unjustified or that have been made for an improper
15 purpose (e.g., to unnecessarily encumber the case development process or to impose
16 unnecessary expenses and burdens on other parties) may expose the Designating
17 Party to sanctions.

18 If it comes to a Designating Party’s attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the inapplicable designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (*e.g.*, paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive

1 the Designating Party's right to secure protection under this Order for such material.
2 Upon timely correction of a designation, the Receiving Party must make reasonable
3 efforts to assure that the material is treated in accordance with the provisions of this
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on
12 the Designating Party. Frivolous challenges, and those made for an improper
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
14 parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party's designation until the Court rules on the
18 challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a
25 Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
3 otherwise ordered by the court or permitted in writing by the Designating Party, a
4 Receiving Party may disclose any information or item designated
5 “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
7 well as employees of said Outside Counsel of Record to whom it is reasonably
8 necessary to disclose the information for this Action;

9 (b) the officers, directors, and employees (including House Counsel) of
10 the Receiving Party to whom disclosure is reasonably necessary for this Action;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

16 (f) professional jury or trial consultants, mock jurors, and Professional
17 Vendors to whom disclosure is reasonably necessary for this Action and who have
18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information;

21 (h) during their depositions, witnesses, and attorneys for witnesses, in the
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
23 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
24 will not be permitted to keep any confidential information unless they sign the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
26 agreed by the Designating Party or ordered by the court. Pages of transcribed
27 deposition testimony or exhibits to depositions that reveal Protected Material may
28 be separately bound by the court reporter and may not be disclosed to anyone except

1 as permitted under this Protective Order; and

2 (i) any mediator or settlement officer, and their supporting personnel,
3 mutually agreed upon by any of the parties engaged in settlement discussions.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
5 IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order
12 to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification shall include
14 a copy of this Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” before a determination by the court from which the
20 subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this Action
24 to disobey a lawful directive from another court.

25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by a
28 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party
9 that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Protective
12 Order in this Action, the relevant discovery request(s), and a reasonably specific
13 description of the information requested; and

14 (3) make the information requested available for inspection by the
15 Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party
18 may produce the Non-Party's confidential information responsive to the discovery
19 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Protective Order, the Receiving Party must immediately (a) notify in writing the
28 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve

all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in a protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. The entry of this Protective Order shall not cause any Party to waive any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party’s request to file Protected Material

under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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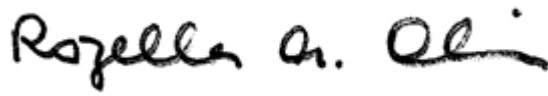
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14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: July 6, 2021



HON. ROZELLA A. OLIVER
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in
7 the case of *Vernon Rubidoux v. Pam Ahlin, et al.*, Case No. CV15-07751 JFW
8 (RAO).

9 I agree to comply with and to be bound by all the terms of this Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for enforcing the terms of this Protective Order,
17 even if such enforcement proceedings occur after termination of this action. I
18 hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____